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Richard A. Nebb  
Vierra Magen Marcus & DeNiro LLP  
575 Market Street, Suite 2500  
San Francisco, California 94105

In re Application of:  
Helmut Emmelmann  
Application No. 09/449021  
Filed: November 24, 1999  
For: INTERACTIVE SERVER SIDE  
COMPONENTS

DECISION ON PETITION  
TO MAKE SPECIAL

This is a decision on the petition, filed on 08 September 2008 requesting that the application be made special under MPEP 707.02. Petitioner also requests reinstatement of the priority date his original appeal filed February 13, 2006. Finally, Petitioner requests that the Notice of Allowance rescinded June 2008 be reinstated or an action identifying any claims rejected.

Review of Facts

A Withdrawal of a Notice of Allowance was mailed on July 9, 2008. In response, Applicant filed a Petition to reconsider the withdrawal on September 9, 2008. The Petition also requests that the status of the application be made "Special" and that the priority date of his original appeal filed February 13, 2006 be reinstated. An Office Action was mailed September 17, 2008. Applicant's response was filed on December 9, 2008 along with a Notice of Appeal. Several discussions were held with Mr. Richard Nebb relating to the possibility of withdrawing the Notice of Appeal in order to insure entry of amendments filed with the December 9<sup>th</sup> response. On December 30, 2008, an RCE was filed for the instant application in order to have amendments filed December 9, 2008 entered

Decision

- I. The request for the application to be made special is **GRANTED**.
- II. The request for reinstatement of the priority of the appeal filed February 13, 2006 is **DENIED**.
- II. The request for a new Office Action identifying the basis of rejection for pending claims is **GRANTED**.

I. REQUEST TO BE MADE SPECIAL

M.P.E.P. § 707.05 relates to applications which have been pending for five years or more or for which three or more Actions have been issued. As noted in this section of the MPEP:

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them. The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office action with a view to finally concluding its prosecution. Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution. In order to accomplish this result, the application is to be considered "special" by the examiner.

The instant application has been pending for over five years and has had more than three Office Actions issued during its pendency. For this reason, the request to be made special is **Granted**.

II. REQUEST FOR REINSTATEMENT OF THE PRIORITY OF THE APPEAL TO THE BPAI

M.P.E.P. § 207.04 addresses the options available to Appellant upon the re-opening of prosecution by the examiner after the filing of an appeal. The relevant portion of this section is reproduced below.

After reopening of prosecution, appellant must exercise one of the following options to avoid abandonment of the application:

- (A) file a reply under 37 CFR 1.111, if the Office action is non-final;
- (B) file a reply under 37 CFR 1.113, if the Office action is final; or
- (C) initiate a new appeal by filing a new notice of appeal under 37 CFR 41.31.

In response to re-opening of prosecution after the filing of an Appeal Brief in 2006, Petitioner chose to continue prosecution of the application as opposed to initiating a new appeal. Thus, there is no basis for reinstating the 2006 Appeal. Indeed there does not appear to be any mechanism for doing so. Petitioner may in response to the most recent Office Action filed, choose to file an Appeal of any rejection of claims therein. For this reason, the request for reinstatement of the original date according to the Appeal filed February 13, 2006 is **DENIED**.

III. REQUEST FOR A NEW OFFICE ACTION OR NOTICE OF ALLOWANCE

The request for a new Office Action identifying the basis of rejection for pending claims is **GRANTED**

A new Office Action on the merits should follow this decision shortly.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3591.

\_\_\_\_\_/Gail Hayes/  
Gail Hayes, SPRE/QAS  
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Computer Architecture, Software, and  
Information Security  
571-272-3591



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,021	11/24/1999	HELMUT EMMELMANN	EMMEL-1000US0	5718
28554 7590 07/01/2009 Vierra Magen Marcus & DeNiro LLP 575 Market Street, Suite 2500 San Francisco, CA 94105			EXAMINER KENDALL, CHUCK O	
			ART UNIT 2192	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.